IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 252 OF 2006

SERTORIO S. FACHO, PANJIM, GOA. ....Appellant

Versus

MR. MANDAR G. S. KHANDEPARKAR AND ANR., ...Respondents

Petitioner in Person.
Mr. J. D'Souza, Advocate for Respondent no.1.
Shri R. G. Ramani, Advocate for Respondent no.2.

Coram:- N. A. BRITTO, J.

Date:- 5th October, 2006

P.C.

Heard the petitioner in person and the learned Counsel on behalf of the respondents.

2. The petitioner was plaintiff in Special Civil Suit No. 59/02/A, which was filed before the learned Civil Judge, Senior Division at Mapusa. On 21.11.2002, the petitioner, as plaintiff, made an endorsement for the withdrawal of the said Civil Suit and for the return of the Court fees, and accordingly, the said Civil Suit was dismissed as withdrawn. On 22.11.2004, the petitioner filed an application purporting it to be an application under Section 151 of C.P.C., which was numbered as CMA 484/02/A, by which the petitioner sought leave to withdraw the earlier endorsement made by him withdrawing the said Civil Suit. However, the said C.M.A, came to be dismissed by Order dated 19.04.2004 of the learned Civil Judge, Senior Division, at Mapusa.

3. The petitioner appears to have challenged the said Order dated 19.04.2004, before this Court in Writ Petition no.366/04, but the said Writ

Petition came to be dismissed by Order dated 26.08.2004. It appears that the petitioner filed for a review of the said Order dated 26.08.2004, which also came to be dismissed by Order dated 28.10.2004.

4. The bone of contention appears to be the application which the petitioner filed dated 28.03.2005, and which came to be decided against the petitioner by Order dated 16.01.2006 by the learned J.M.F.C.and against which, the petitioner preferred an appeal to the Court of Sessions, which also came to be dismissed by Order dated 29.03.2006.

5. The said application dated 28.03.2005 was filed by the petitioner under Section 340 of the Code of Criminal Procedure, 1973, with a view to take action against the respondents herein. It is submitted on behalf of respondent no.1 that the issue of jurisdiction of the learned J.M.F.C. to whom the said application was made over to be decided, was taken up before the learned J.M.F.C. at the instance of respondent no.1. The learned J.M.F.C. in her Order dated 16.01.2006, inter alia, held that she had no jurisdiction to see whether the statements made by the Advocates, (Respondents herein),in the said Special Civil Suit before the said learned Civil Judge, Senior Division, would amount to any offence attracting the provisions of Section 340 of Cr.P.C. However, the learned J.M.F.C. did not order that the said application should be placed before the learned Civil Judge, Senior Division, who had decided the said Special Civil Suit or the said C.M.A. The learned Sessions Judge in her Order dated 29.03.2006, also observed that the petitioner's application under Section 340 of the Criminal Procedure Code, ought to have been filed before the same Court, wherein the alleged statement was said to have been made and that, in the case at hand, the application under Section 340 of the Criminal Procedure Code, was registered as Criminal Misc.Application and was made over to some other Court and, therefore, the procedure adopted in her considered view, was not correct. However, the learned Sessions Judge, did not set that wrong, right.

6. No doubt, the petitioner had filed the said application dated

28.03.2005, in the Court of the Chief Judicial Magistrate. The petitioner is a layman. However, it did not require a discerning eye to see that the said application dated 28.03.2005, was made by the petitioner, in relation to the said Civil Suit no.59/02/A, and therefore, could have been entertained and disposed of only by the Court which had decided the said Civil Suit or the said CMA no. 484/02/A, and could not have been decided by a Judicial Magistrate. There can be no quarrel with the proposition that it is for the Court to file a complaint in terms of Section 340 of the Code of Criminal Procedure, 1973, but nothing prevents a party from applying to the Court to take action as contemplated by Section 340 of the Code. It is not necessary to go into the merits of the application filed by the petitioner dated 28.03.2005, even though the petitioner has now invoked the extra ordinary jurisdiction of this Court under Section 482 of the Code. Suffice it to observe, that the petitioner having made the said application in the said Civil Suit, the same ought to have been decided by the learned Civil Judge, Senior Division, at Mapusa, who had decided the said Civil Suit, or for that matter, the CMA no. 484/02/A filed in the same.

7. Consequently, the Order of both the Courts below deserve to be set aside and the matter remanded to the Court of Civil Judge, Senior Division, at Mapusa, to consider the said application dated 28.03.2005 in accordance with law. Parties to appear before the learned Civil Judge, Senior Division at Mapusa, on 26th instant at 10.30 a.m. The learned Counsel on behalf of respondent no.1 prays for leave to appeal to the Supreme Court. The facts and circumstances of the case, do not qualify the grant of such leave. Prayer rejected.

N. A. BRITTO, J.

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